



DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
1777 HARDEE AVENUE SW  
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO  
ATTENTION OF

AFLG-PR

12 July 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 99-27, Recent Provision of Law at 10 U.S.C. 2482a, Nonappropriated Fund Instrumentalities (NAFIs): Contracts With Other Agencies and Instrumentalities to Provide and Obtain Goods and Services

1. References:

a. Headquarters, Department of the Army, Directorate for Procurement Policy (SARD-PP) memorandum dated 30 April 1999, subject: Army Federal Acquisition Regulation Supplement (AFARS) 13.90 (enclosure 1).

b. A copy of the language at 10 U.S.C. 2482a (enclosure 2).

c. Forces Command Contracting Information Letter (CIL) 96-11, dated 12 January 1996, item b, Purchases from Nonappropriated Fund Instrumentalities (enclosure 3).

d. Acquisition Letter 94-10, dated 30 November 1994, items VIII, Acquisitions using Nonappropriated Funds (AFARS 1.900-1) and IX, Government Credit Cards (AFARS 13.90) (enclosure 4).

2. This CIL addresses contracting between Army appropriated fund (APF) organizations, the exchange system outlets, and Morale, Welfare, and Recreation (MWR) NAFIs. In 1994 (see enclosure 4), authority was given to allow the use of appropriated fund purchase cards up to the micro purchase limit (\$2,500) at Army and Air Force Exchange System outlets (AAFES) **only**. However, in 1995 the authority was expanded to cover other NAFIs (see enclosure 3). The requirement stated in DAFA-KL memorandum dated 13 December 1995, subject: Purchases From NAFIs, paragraph 2a, still applies (enclosure 3).

AFLG-PR

SUBJECT: Contracting Information Letter (CIL) 99-27, Recent Provision of Law at 10 U.S.C. 2482a, Nonappropriated Fund Instrumentalities (NAFIs): Contracts With Other Agencies and Instrumentalities to Provide and Obtain Goods and Services

3. Language that codified Army policy on this subject was placed in the 1996 Authorization Act and has recently come to our attention (enclosure 2). News of 10 U.S.C. 2482a has been released to the Forces Command MWR Community; and therefore, many DOCs may soon feel pressure to award contracts to NAFIs. It is the FORSCOM PARC's opinion that the law did not intend to make NAFIs a regular supplier of APF agencies at the expense of soldiers and their families who are the NAFIs chartered customer base. It is more likely that the law was relaxed in order to facilitate "obtaining goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system." Therefore, care must be taken to ensure that any new requirements developed to serve APF organizations do not result in NAFI abandonment of its original customer base.

4. The subject statute opened a pathway into a new arena for which few, if any, boundaries have yet been established. For instance, "Would use of the government credit card qualify as a contractual vehicle in the same fashion as a purchase order or other contract, thereby conforming to the requirements of the 1978 GAO mattress case?" In our view, the most likely answer is **YES**, but, again, this conclusion is yet to be confirmed in Army policy. The Mattress case can be found at Comptroller General Decisions B-148581, B-189561, B-190650 (21 November 1978), 58 Comptroller General 94 (1978), 78-2 CPD 353. In the Mattress Case the General Accounting Office (GAO) determined that APF entities **must** use a **contractual document** to obtain goods and or services from a NAFI.

5. However, the areas not addressed in the revised law that require **caution** include:

a. Can the exchange system and the MWR NAFIs compete for "contracts or other agreements" **outside** their chartered areas. All previous decisions, rulings, regulations, etc., state that "a NAFI may compete in and be awarded a contract under a competitive procurement **unless precluded from doing so by its charter**" (Comptroller General Decision B-214810 (29 November 1984), 64 Comptroller General 110, Graduate School of the

AFLG-PR

SUBJECT: Contracting Information Letter (CIL) 99-27, Recent Provision of Law at 10 USC 2482a, Nonappropriated Fund Instrumentalities (NAFIs): Contracts With Other Agencies and Instrumentalities to Provide and Obtain Goods and Services

Department of Agriculture Case). This appears to continue as Army policy, but has yet to be tested or confirmed in any direct challenge.

b. When contracting with a NAFI, who would **sign** the offer for the NAFI? Comptroller General decisions and current FAR, as a matter of procurement policy, generally restrict **the Federal Government from contracting with its own employees**. Our tentative position is that the NAFI is **NOT** a federal executive agency, and, therefore, contracts between NAFIs (executed by warranted contracting officers) and Army organizations do not likely violate this FAR limitation. However, this position has also never been directly challenged, and we are not aware of any published decisions on this issue.

c. Would the NAFI qualify as a small business subject to regulation by the Small Business Administration? If yes, would any portions of the Small Business Act apply to alter current NAFI contracting procedures, and, if yes, which ones?

d. Would the Service Contract Act (SCA) have any application to NAF awarded service contracts on behalf of Army organizations? Should the NAF wage schedule apply?

e. To what extent, if any, would NAFIs be required to compete with small business vendors in pursuit of Army service contracts? Would competition requirements even apply at all to this new, expanded, contracting authority with NAFIs?

f. What is the criteria to determine **"beneficial to the efficient management and operation of the exchange system or that MWR system?"**

6. This CIL has been coordinated with the Forces Command Staff Judge Advocate. Implementing guidance for the subject law has not yet been developed by Headquarters, Department of the Army and the views enunciated in this CIL are clearly those of the Forces Command Principal Assistant Responsible for Contracting

AFLG-PR

SUBJECT: Contracting Information Letter (CIL) 99-27, Recent Provision of Law at 10 USC 2482a, Nonappropriated Fund Instrumentalities (NAFIs): Contracts With Other Agencies and Instrumentalities to Provide and Obtain Goods and Services

(PARC). Subsequent guidance developed and distributed by HQ, DA will supercede this CIL.

7. Questions regarding this subject should be directed to the point of contact, Ms. Brenda Good Miller, DSN 367-6224 or e-mail: goodmilb@forscom.army.mil.



TONI M. GAINES  
Chief, Contracting Division, DSCLOG  
Principal Assistant Responsible  
for Contracting

4 Encls  
as

DISTRIBUTION:

COMMANDERS,

III CORPS & FT HOOD, ATTN: AFZF-DOC

XVIII ABN CORPS & FT BRAGG, ATTN: AFZA-DC

FT RILEY, ATTN: AFZN-DOC

FT CARSON, ATTN: AFZC-DOC

JRTC & FT POLK, ATTN: AFZX-DOC

I CORPS & FT LEWIS, P.O. BOX 33031, ATTN: AFZH-DOC

3D INF DIV (MECH) & FT STEWART, ATTN: AFZP-DC

101<sup>ST</sup> ABN DIV (AASLT) & FT CAMPBELL, ATTN: AFZB-DOC

FT DIX, ATTN: AFZT-DOC

10<sup>TH</sup> MTN DIV & FT DRUM, ATTN: AFZS-DOC

FT MCCOY, ATTN: AFRC-FM-DC

NTC & FT IRWIN, ATTN: AFZJ-DC

ARMY ATLANTA CONTRACTING CENTER, ATTN: AFLG-PRC



REPLY TO  
ATTENTION OF

SARD-PP

DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH DEVELOPMENT AND ACQUISITION  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

APR 30 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Federal Acquisition Regulation Supplement- 13.90

The following is a restatement of Army Policy. A recent provision of law at 10 USC 2482a, titled "Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services" permits purchase from the Army and Air Force Exchange Service System (AAFES) and other nonappropriated fund instrumentalities (NAFIs) which support the morale, welfare and recreation systems of the DOD.

Army organizations are authorized to use the Government Purchase Card (GPC) up to the micro-purchase threshold at DOD NAFIs, including AAFES facilities, provided the resale activities are within the scope of the particular NAFIs' charter.

Micropurchase guidelines shall be followed in accordance with FAR 13.202. This policy will be reflected in an upcoming formal change to the AFARS.

Should you have any questions regarding this subject, the point of contact is Dorothy Hindman at Commercial (703) 681-3417 or DSN 761-3417, Email: [hindmand@sarda.army.mil](mailto:hindmand@sarda.army.mil).

Estherlene S. Morse  
Director for Procurement and  
Industrial Base Policy

DISTRIBUTION:

PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING  
HQ, U.S. Army Materiel Command, ATTN: AMCRDA-AC (PARC),  
5001 Eisenhower Avenue, Alexandria, VA 22333-0001

U.S. Army Aviation and Missile Command, ATTN: AMSAM-AC, Redstone  
Arsenal, AL 35898-5000



DISTRIBUTION: (CON'T)

PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING

U.S. Army Materiel Command Acquisition Center, ATTN: STEAA-AE,  
4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005-5002

U.S. Army Communications-Electronics Command, ATTN: AMSEL-AC,  
Fort Monmouth, NJ 07703-5000

U.S. Army Industrial Operations Command, ATTN: AMSIO-AC, Rock Island,  
IL 61299-6000

U.S. Army Tank-automotive and Armaments Command, ATTN: AMSTA-AQ,  
Warren, MI 48397-5000

Defense Supply Service - Washington, 5200 Army Pentagon, Washington,  
DC 20310-5200

→ Headquarters Forces Command, ATTN: AFLG-PR, 1777 Hardee Avenue  
S.W., Fort McPherson, GA 30330-1062

Third United States Army/U.S. Army Forces Central Command, 1301  
Anderson Way S.W., Fort McPherson, GA 30330-1064

U.S. Army Medical Command, ATTN: MCAA-PARC, 2107 17<sup>th</sup> Street,  
Building 4197, Suite 69, Fort Sam Houston, TX 78234-5069

U.S. Army Intelligence & Security Command, ATTN: IAPC, Fort Belvoir,  
VA 22060-5246

U.S. Army Medical Research and Materiel Command, ATTN: MCMR-AAZ-A,  
820 Chandler Street, Fort Detrick, MD 21702-5014

U.S. Army Military District of Washington, Fort Lesley J. McNair, ATTN:  
ANPC, 103 Third Avenue, Fort Lesley J. McNair, DC 20319-5058

Military Traffic Management Command, ATTN: MTAQ, 5611 Columbia Pike,  
Falls Church, VA 22041-5050

U.S. Army Space and Missile Defense Command, ATTN: SMDC-CM (PARC),  
P.O. Box 1500, Huntsville, AL 35807-3801

U.S. Army Training and Doctrine Command, DCSBOS, ATTN: ATBO-A,  
5 North Gate Road, Building 5F, Room 306, Fort Monroe, VA 23651-1048

U.S. Army Contracting Command, Europe, ATTN: AEAPR-PA (PARC),  
Unit 29331, APO AE 09266

Headquarters, Eighth United States Army, ATTN: FKAQ/EAAQ, Unit 15236,  
APO AP 96205-0009

U.S. Army, Pacific, ATTN: APAM, Fort Shafter, HI 96858-5100

U.S. Army South, ATTN: SOCS-CO, Unit 7101, APO AA 34004-5000

U.S. Army Corps of Engineers, ATTN: CEPR-ZA, 20 Massachusetts Avenue,  
N.W., Washington, DC 20314-1000

National Guard Bureau, ATTN: NGB-AQ, Suite 8300, Jefferson Plaza 1,  
1411 Jefferson Davis Highway, Arlington, VA 22202-3231



Service:LEXSTAT®

10 uscs 2482a

New Search

Search

Get a Document

Check a Citation

prev < Document 1 of 1 > next

10 USC § 2482a

[Book Browse](#) | [FOCUS](#) [More Like This](#) | [More Like Selected Text](#) [Text Only](#) | [Print](#), [Download](#), [Email](#), [Fax](#)

10 USCS § 2482a

UNITED STATES CODE SERVICE

Copyright 1999, LEXIS Law Publishing, a division of Reed Elsevier Inc.

All rights reserved.

\*\*\* THIS SECTION IS CURRENT THROUGH 106-21, APPROVED 4/19/99 \*\*\*

TITLE 10. ARMED FORCES  
SUBTITLE A. GENERAL MILITARY LAW  
PART IV. SERVICE, SUPPLY, AND PROCUREMENT  
CHAPTER 147. COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE,  
AND RECREATION ACTIVITIES

10 USCS § 2482a (1999)

§ 2482a. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services

An agency or instrumentality of the Department of Defense that supports the operation of the exchange system, or the operation of a morale, welfare, and recreation system, of the Department of Defense may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.

**HISTORY:**

(Added Sept. 23, 1996, P.L. 104-201, Div A, Title III, Subtitle D, § 341(a)(1), 110 Stat. 2489.)

[Book Browse](#) | [FOCUS](#) [More Like This](#) | [More Like Selected Text](#) [Text Only](#) | [Print](#), [Download](#), [Email](#), [Fax](#)

10 USC § 2482a

prev < Document 1 of 1 > next



DEPARTMENT OF THE ARMY  
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND  
FORT MCPHERSON, GEORGIA 30330-6000

REPLY TO  
ATTENTION OF

AFLG-PRM

12 January 1996

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 96-11

1. This CIL contains information on the following reengineering issues:

- a. Waiver To FIRMR Requirements For Acquisitions Less Than \$100,000.
- b. Purchases From Non Appropriated Fund Instrumentalities.
- c. Purchasing Office Supplies Directly From National Industries For the Blind (NIB).
- d. IMPAC Information Item.
- e. Engineering Steering Committee (ESC) Minutes.

2. Waiver To FIRMR Requirements For Acquisitions Less Than \$100,000.

a. Reference General Services Administration (GSA) letter dated 20 Dec 95 (encl 1). GSA granted FORSCOM's request for a waiver from the existing FIRMR requirement to perform a requirements analysis and to conduct an analysis of alternatives for acquisitions of Federal Information Processing (FIP) Resources under \$100,000. This waiver will remain in effect through FY 96 or until the proposed FIRMR rule becomes effective, whichever is sooner.

b. The proposed FIRMR rule will eliminate the preparation of these two documents up to \$500,000 and allow agencies to substitute similar documentation prepared in response to programmatic needs for requirements analyses. Information Mission Area Planning Documents and Requirements Statements satisfy the intent of the FIRMR.





DEPARTMENT OF THE ARMY  
US ARMY CONTRACTING SUPPORT AGENCY  
5109 LEESBURG PIKE SUITE 916  
FALLS CHURCH VA 22041-3201



REPLY TO  
ATTENTION OF

15 DEC 1995

SFAE-CSA-PPP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Purchases From Non Appropriated Fund  
Instrumentalities


A recent White Hat Initiative from U.S. Army Forces Command revealed the need for additional clarification and guidance on the use of appropriated funds to purchase supplies and services from non appropriated fund instrumentalities (NAFIs).

The Office of the Army Judge Advocate issued the attached opinion that appropriated funds up to \$2,500 may be used to purchase supplies/services from NAFIs. The opinion is based in part on the statutory authority to purchase non-competitively up to \$2,500. It should, however, be noted that micropurchases should be rotated among vendors.

The prohibition at AFARS 13.9003 (k) has been removed from the pending AFARS revision. However, the FAR writing convention, as identified in FAR Subpart 1.102(d), stipulates that members of the acquisition team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law, Executive Order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

Therefore, the Army IMPAC Purchase Card may be used as a method of procurement for purchases of supplies or services from NAFIs up to \$2,500, if not otherwise prohibited by law, Executive Order or other regulation. Purchases up to \$50,000 may be made from Post Exchanges only (vice NAFIs) by overseas organizations and the purchase card can be used as the method of payment.

Questions on this subject should be addressed to Mr. Bruce E. Sullivan, Army Program Coordinator, (DSN) 761-9086 or (e.mail) [sullivanb@sarda.army.mil](mailto:sullivanb@sarda.army.mil).

  
LEE THOMPSON  
Colonel, GS  
Director

Attachment

DISTRIBUTION:

Acting Chief, Assessment & Evaluation Division  
HQ, U.S. Army Materiel Command, ATTN: AMCAQ-E,  
5001 Eisenhower Avenue, Alexandria, VA 22333-0001  
Deputy for Acquisition, U.S. Army Industrial Operations  
Command, ATTN: AMSIO-AC, Rock Island, IL 61299-6000  
Executive Director, Acquisition Center, U.S. Army  
Aviation and Troop Command, ATTN: AMSAT-A-Z, 4300  
Goodfellow Boulevard, St. Louis, MO 63120-1798  
Director (C4IEW) Acquisition Center, U.S. Army  
Communications-Electronics Command, ATTN: AMSEL-AC,  
Fort Monmouth, NJ 07703-5000  
Director of Procurement, U.S. Army Research  
Laboratory, ATTN: AMSRL-OP-PR, 2800 Powder Mill  
Road, Adelphi, MD 20783-1197  
Director of Acquisition Center, U.S. Army Missile  
Command, ATTN: AMSMI-AC, Redstone Arsenal, AL  
35898-5280  
Director of Acquisition Center, U.S. Army Tank-  
Automotive and Armaments Command, ATTN:  
AMSTA-AQ, Warren, MI 48397-5000  
Director of Procurement, U.S. Army Test and Evaluation  
Command, ATTN: AMSTE-PR, Aberdeen Proving Ground, MD  
21005-5055  
PARC, U.S. Army Corps of Engineers, ATTN: CEPR-ZA,  
20 Massachusetts Avenue, N.W., Washington, DC  
20314-1000  
→ Principal Assistant Responsible for Contracting,  
Headquarters, U.S. Army Forces Command,  
ATTN: AFLG-PR, 200 Hardee Avenue, Fort McPherson, GA  
30330-6000  
Director of Acquisition, U.S. Army Training and  
Doctrine Command, ATTN: ATBO-A, Fort Monroe, VA  
23651-5000  
U.S. Army Information Systems Command, ATTN: ASPC,  
Fort Huachuca, AZ 85613-5000  
Director, U.S. Army Information System Selection &  
Acquisition Agency (USAISSAA), ATTN: ISSA-PP, 2461  
Eisenhower Avenue, Alexandria, VA 22331-0700  
Assistant Chief of Staff for Acquisition Management,  
U.S. Army, Pacific, ATTN: APAM, Fort Shafter, HI  
96858-5100



DEPARTMENT OF THE ARMY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
2200 ARMY PENTAGON  
WASHINGTON, DC 20310-2200



REPLY TO  
ATTENTION OF

DAJA-KL

13 December 1995

MEMORANDUM FOR BRUCE SULLIVAN

Subject: Purchases from NAFIS

1. This responds to your question concerning whether the AFARS should be changed to allow for use of appropriated funds to purchase supplies/services from NAFIs up to \$2500 in CONUS and \$25,000 in OCONUS. The proposed change would expand on AFARS 13.9003(k) which gives this authority to AAFES.

2. In our opinion, appropriated funds up to \$2500 (the micropurchase threshold) may be used to purchase supplies/services from NAFIs.

a. The general rule is that NAFIs are prohibited from contracting with appropriated fund activities unless specifically allowed by its charter. There is an exception to this rule if necessitated by special circumstances (e.g. sole source).

b. Based on this exception and the separate statutory authority to purchase non-competitively up to \$2500, the AFARS was changed to allow for the expenditure of appropriated funds at AAFES up to the micropurchase threshold.

c. This same rationale can be used to support a change to the AFARS that would allow the expenditure of appropriated funds at NAFIs up to the micropurchase threshold.

d. It should be noted that micropurchases must be rotated among qualified suppliers.

3. The AFARS authority to make non-competitive purchases with appropriated funds at OCONUS AAFES up to \$25,000 (with a statutory ceiling of \$50,000) is based on statute. See 10 USC 2424. The statute cannot be expanded to encompass NAFIs other than AAFES.

4. If I can be of further assistance, I may be reached at 693-4071.

*Kevin E. O'Brien*  
KEVIN E. O'BRIEN  
Colonel, JA  
Chief, Contract Law Division

Enclosure 3  
Page 5 of 5



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
U.S. ARMY CONTRACTING SUPPORT AGENCY  
5109 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041-3201



REPLY TO  
ATTENTION OF  
SFRD-KP

80 NOV 1994

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Acquisition Letter (AL) 94-10

This AL contains changes to the FAR, DFARS, AFARS, and items of general interest to acquisition personnel.

Point of contact for this AL is Ray Kelly, (703) 756-7563/  
DSN 289-7563 or Margaret DeCosta-Smith, (703) 756-7577/  
DSN 289-7577.

FAR

- I. Extension to Class Deviation - Special Tooling  
(FAR 45.306-5 and 52.245-17)

DFARS

- II. Award to Foreign Controlled Contractors  
(DFARS 209, 225 and 252.209)
- III. Terrorist Countries (DFARS 209 and 252.209)
- IV. Small Purchase in Support of Contingency Operations  
(DFARS 213)
- V. Predetermined Indirect Cost Rates (DFARS 216.3,  
242.7, and 252.2)
- VI. Best Value - Stevedoring (DFARS 247.2)

AFARS

- VII. Armed Forces Radio and Television Services Broadcast  
Center (AFRTS) Head of Contracting Activity (HCA)
- VIII. Acquisitions using Nonappropriated Funds  
(AFARS 13.900-1)
- IX. Government Credit Cards (AFARS 13.90)
- X. Job Ordering Contracting (JOC) Ordering Officers  
(AFARS 17.91)
- XI. Major System Acquisitions (Part 34)

- (1) Defense Small Purchase Course (or equivalent); or
  - (2) Management of Defense Acquisition Contracts (or equivalent).
- (f) Personnel who have previously completed either of the above formal training courses may become cardholders without additional training.
- (g) Cardholders shall receive procurement ethics training and execute the procurement integrity certification required by FAR 3.104-12. Cardholders are procurement officials, as defined under Section 27 of the Office of Federal Procurement Policy Act.
- (h) Cardholders will maintain documentation of purchase transactions, which reflect items purchased, cost, and item availability. The approving official will review the cardholder's documentation monthly to ensure that purchases are made in accordance with FAR/DFARS/AFARS requirements.
- (i) Dollar Limits.
- (1) Cardholders not assigned to a contracting office shall not exceed the single purchase limitation (\$2500) at 1.603-1-90(b)(2).
  - (2) Warranted Contracting Officers shall not authorize transactions over the small purchase limitation (\$25,000) in FAR Part 13.
- (j) The items listed below shall not be paid for using the credit card, and are in addition to those for which credit card use is prohibited (as listed in the GSA Schedule). The PARC or the DOC may add other restrictions.
- (1) Meals for reserve training.
  - (2) Non-expendable property, unless authorized by the PARC or the DOC, and appropriate property accountability safeguards are included in the internal written procedures.
- (k) Purchases at post exchanges using the credit card are permitted at or below \$2,500 in CONUS and at or below \$25,000 OCONUS.
- (l) The PARC or the DOC will issue (in writing) the required delegation of authority to cardholders. Delegations will specify authority and limitations, subject to thresholds outlined in "Dollar Limits" above.